Local 455, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Building Contractors Association of New Jersey) *and* William J. Koenig. Case 22-CB-4936

21 August 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS HUNTER AND DENNIS

On 20 April 1984 Administrative Law Judge James F. Morton issued the attached decision. The Respondent, Local 455, United Brotherhood of Carpenters and Joiners of America, AFL-CIO filed exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and has decided to affirm the judge's rulings, findings, and conclusions[1] as modified and to adopt the recommended Order.

Judge Morton held that Local 455, United Brotherhood of Carpenters and Joiners of America, AFL-CIO violated Section 8(b)(1)(A) and (2)[2] of the National Labor Relations Act by attempting to cause the discharge of employee William Koenig on 30 March 1983 and by causing Koenig's discharge on 13 August 1983. Local 455 excepts, on a number of grounds, to the finding of these violations. No party excepts to, and we do not consider, the judge's dismissal of other allegations that, from 16 August through 21 September 1983, Local 455 prevented Koenig from registering for job referrals at its hiring hall and refused to refer him to employment.

We find that Local 455's exceptions do not warrant reversal of the judge's conclusions that Local 455 violated Section 8(b)(1)(A) and (2), but we supplement and modify the judge's rationale as follows.

First, in adopting the judge's conclusion that Local 455 was attempting to cause Koenig's discharge on 30 March 1983, when Local 455's business representative sent a letter to J-Sac Construction Co., Inc., Koenig's employer, stating that Koenig was not presently a member of the Carpenters Union, we note that the union-security provision, article III of the collective-bargaining agreement, contains the following language:

> In the event an employee fails to tender the initiation fee or fails to maintain membership in good standing, the Union shall notify the Employer in writing, and such a notice shall constitute a request to the Employer to discharge said employee within forty-eight (48) hours (Saturdays, Sundays and holidays excluded) for failure to maintain continuous good standing in the Union, as set forth herein. The Employer then shall discharge such employee at the end of such period.

The presence of this contract language lends further support to the judge's conclusion that the business representative's letter was an attempt to cause Koenig's discharge, even though the letter itself failed to specify what action, if any, Koenig's employer was expected to take in response to the letter.

Additionally, we agree with Local 455 that the judge erred in declining to decide whether Local 455's attempting to cause, and its eventual causing of, Koenig's discharge constituted lawful enforcement of a union-security clause because of Koenig's failure to pay periodic dues. Contrary to the judge, the fact that Local 455 maintained, and presented evidence to show, that it had not attempted to cause Koenig's discharge, did not preclude it from alternatively arguing that if it had attempted to cause Koenig's discharge, such action was validly taken. See generally 2A Moore, *Federal Practice* ¶¶ 8.31-8.32 (2d ed. 1984); 5 Wright, *Federal Practice and Procedure* § 1283 (1969). Therefore, we now consider this argument.

The Board presumes that a union's attempts to cause an employee's discharge are unlawful. *Boilermakers Local 40 (Envirotech Corp.)*, 266 NLRB 432 (1983). A union may rebut this presumption by showing that such attempts were made pursuant to a valid union-security clause. *Operating Engineers Local 18 (Ohio Contractors)*, 204 NLRB 681 (1973). In this case, in order to show that its efforts to

[1] Local 455 filed with the Board a motion for a new hearing, seeking to set aside the decision of the judge on the grounds of fraud and mistake. The General Counsel filed an opposition to the motion, to which Local 455 responded by filing a brief. In support of its motion, Local 455 attached a photocopy of a document purporting to be a letter dated 14 May 1984 from the managing director of the Building Contractors Association of New Jersey stating that, as far as the Association's records show, J-Sac Construction, Inc. has never been a member of the Building Contractors Association of New Jersey. The complaint in this case alleges, and Local 455's answer admits, that J-Sac Construction Co., Inc. was a member of the Building Contractors Association of New Jersey, and the judge so found. Additionally, the president of J-Sac gave uncontroverted testimony that J-Sac Construction Co., Inc. was a member of the Building Contractors Association of New Jersey. Assuming arguendo that what the document attached to Local 455's motion says is correct—that the records of the Building Contractors Association of New Jersey fail to show that J-Sac Construction, Inc. has ever been a member of the Building Contractors Association of New Jersey—Local 455's motion nevertheless makes no showing that the evidence contained in the document was previously unavailable or was newly discovered and with due diligence could not have been previously discovered. Accordingly, the motion is denied. See, e.g., *Benchmark Industries*, 270 NLRB 22 fn. 1 (1984); *Longshoremen ILA Local 1291 (Trailer Marine)*, 266 NLRB 1204 fn. 1 (1983).

[2] 29 U.S.C. § 158(b)(1)(A) and (2).

cause Koenig's discharge were made pursuant to a valid union-security clause, Local 455 had to show at the least that its strike assessment that Koenig refused to pay constituted "periodic dues" within the meaning of Section 8(b)(2) and the second proviso of Section 8(a)(3) of the Act. Local 455 failed to make this showing.

The status of strike assessments in general is well established. As early as 1955, a trial examiner's decision, adopted in pertinent part by the Board, contained the following statement: "The Act is specific, and the law is now well-settled, that the words 'dues and initiation fees uniformly required' [contained in Secs. 8(a)(3) and (b)(2)] do not include assessments, fines, penalties, or anything except dues and initiation fees." *Peerless Tool & Engineering Co.*, 111 NLRB 853, 871 (1955), enfd. sub nom. *NLRB v. Die & Tool Makers Lodge 113*, 231 F.2d 298 (7th Cir. 1956), cert. denied 352 U.S. 833 (1956). The union in that case was held to have violated Section 8(b)(2) by causing the discharge of five employees for failing to pay a strike assessment.

Several years later, in *Florence Brooks*, 131 NLRB 756 (1961), enfd. as modified sub nom. *Food Fair Stores v. NLRB*, 307 F.2d 3 (3d Cir. 1962), the Board again adopted a trial examiner's decision holding that a union violated the Act by threatening the discharge of employees under a union-security agreement if they did not pay a strike assessment. The trial examiner, marshaling the decisions on point, noted that strike assessments and other assessments had consistently been held not to constitute "periodic dues" within the meaning of Sections 8(a)(3) and 8(b)(2). 131 NLRB at 771 & fns. 18–19.

In enforcing the Board's decision in that case, the Third Circuit articulated the distinction between periodic dues and assessments as follows:

> [T]he term "periodic dues" in the usual and ordinary sense means the regular payments imposed for the benefits to be derived from membership to be made at fixed intervals for the maintenance of the organization. An assessment, on the other hand, is a charge levied on each member in the nature of a tax or some other burden for a special purpose, not having the character of being susceptible of anticipation as a regularly recurring obligation as in the case of "periodic dues."

307 F.2d at 11. This formulation was adopted by the Board in *Teamsters Local 959 (RCA Service)*, 167 NLRB 1042, 1045 (1967).

In the present case, the record concerning the nature, duration, and purpose of the strike assessment is sparse. All that is shown is that the strike assessment was implemented in April 1982 in the amount of $2 a month, and the funds it generated were to be kept separate from the union treasury and used for strike and picket activities. There is no indication whether the assessment was permanent or was for a limited duration, nor does the record show whether the assessment was adopted because of, or in anticipation of, a particular strike. Therefore, in applying the above-quoted definition formulated by the Third Circuit in *Food Fair*, we have little basis on which to determine whether the strike assessment was for a "special purpose, not . . . susceptible of anticipation as a regularly recurring obligation" and thus constituted an assessment or, rather, was for "the maintenance of the organization" and thus was encompassed by the definition of periodic dues. The very fact that Local 455 called the obligation an assessment rather than dues may tend to indicate that it was a temporary measure taken for a special purpose. Accordingly, we conclude that Local 455, which has the burden of rebutting the presumption of illegality in the discharge of Koenig, has failed to show that the strike assessment constituted "periodic dues." Thus, we hold that Local 455's efforts to cause Koenig's discharge did not constitute lawful enforcement of a union-security clause.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Local 455, United Brotherhood of Carpenters and Joiners of America, AFL–CIO, its officers, agents, and representatives, shall take the action set forth in the Order.

DECISION

STATEMENT OF THE CASE

JAMES F. MORTON, Administrative Law Judge. The complaint in this case alleges that Local 455, United Brotherhood of Carpenters and Joiners of America, AFL–CIO (Respondent), violated Section 8(b)(1)(A) and (2) of the National Labor Relations Act (the Act) by:

1. Having attempted on March 30, 1983, to cause the discharge of employee William Koenig.

2. Having attempted to cause and by having caused his discharge on August 13, 1983.

3. Having, from August 16 through September 21, 1983, prevented Koenig from registering for job referrals at its exclusive hiring hall and by having, during that interval, refused to refer him to employment.

Respondent, by its answer, put those allegations in issue.

Based on the entire record in this case, including my observation of the demeanor of the witnesses, and the

briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. LABOR ORGANIZATION STATUS AND COMMERCE

The pleadings establish that Respondent is a labor organization as defined in Section 2(5) of the Act and that it operates an exclusive job referral system at its office in Bridgewater, New Jersey, for journeymen carpenters who are sent to J-Sac Construction Co., Inc. and other employer-members of the Building Contractors Association of New Jersey. The pleadings establish that those employer-members are engaged as contractors in the building construction industry and that their annual operations meet the Board's applicable standard for the assertion of jurisdiction.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

The Charging Party, Koenig, became a member of Respondent in 1974 and has used its exclusive job referral service to obtain employment as a journeyman carpenter. In 1975, Koenig initiated inquiries into the status of various union pension and welfare funds, including those involving Respondent. Koenig also proposed amendments to Respondent's bylaws in an effort to restrict certain practices he deemed undesirable. He was elected vice president of Respondent in 1978 and lost elections in 1980 and 1983 when he ran respectively for the posts of recording secretary and business agent.

Counsel for the General Counsel has asked me to take official notice of the Board's decision in *Morlot Carpentry*, 251 NLRB 773 (1980), which contains a lengthy account of Koenig's intraunion activities and to take official notice also of a lawsuit he initiated against Respondent in the U.S. District Court for the District of New Jersey, Civil 79-2209, in which he accused its officials of having unlawfully infringed on his rights as a union member. Respondent's counsel stated at the hearing before me that, not only did he not have any objection to my taking official notice of those proceedings, but also that Respondent was "powerfully irritated" at what it viewed as Koenig's unwarranted attacks on its leadership over the years.[1] I shall take official notice of the matters as requested.

The last time that Koenig signed Respondent's out-of-work book at its job referral hall was in April 1982. Koenig was then referred to work as a carpenter with J-Sac Construction Co., Inc. (J-Sac). He has worked steadily with J-Sac since except for an extended vacation period at one point and for the period involved in this case during which he was allegedly discriminated against by reason of Respondent's alleged unlawful conduct, i.e., August 16-September 21, 1983.[2]

As noted above in footnote 1, Koenig has been contesting the legality of Respondent's actions in having implemented a $2 monthly increase in union dues to be used as a strike fund. In early 1983 (all dates hereafter are for 1983 unless noted otherwise), Koenig was advised by Respondent's financial secretary that he would be dropped from its membership rolls if he continued to refuse to pay that $2 monthly assessment. He refused to make such payments although he did continue to tender to Respondent $16 each month, as regular dues.

B. *The Alleged Unlawful Attempt on March 30*

Joseph Cusumano, president of J-Sac, testified that, in early April, he received a letter dated March 30 from Respondent's business representative, George H. Clark, which read:

> This letter is to inform you that Mr. William Koenig is not presently a member of the United Brotherhood of Carpenters and Joiners of America.

Cusumano testified that, upon receipt of that letter, he spoke with Clark and, in essence, told Clark that J-Sac did not want to get involved in any dispute between Koenig and Respondent. According to Cusumano, he told Clark that, as Koenig was a good carpenter, he would continue in J-Sac's employ. Cusumano further testified that Clark responded that Koenig is no longer a union member.

Clark testified for Respondent as follows respecting his conversation with Cusumano. He recalled clearly that Cusumano called him, not on April 1 but on April 5. He informed Cusumano then that, in accordance with the March 30 letter, Koenig was no longer a member of Respondent. Cusumano then asked if that meant that he had to let Koenig go. Clark told him that he did not but that Respondent, probably in accordance with its procedures, would return to J-Sac the portion of the dues it remitted which J-Sac had deducted from Koenig's wages. Clark made a reference to "a decision that [J-Sac would] have to make further down the road." The reasons that Clark had sent the March 30 letter were to notify J-Sac that Koenig was no longer a member of the Union, and to enable J-Sac to return to Koenig any dues that it had deducted from Koenig's wages.

I credit Cusumano. Clark's explanation for having sent the March 30 letter makes little sense to me. If Clark were genuinely concerned solely with Koenig's getting a prompt refund of his union dues, he would have made that unequivocally clear in the letter itself, if only to ensure that there would be no delay. Clark would have me accept his account that he waited until April 5 and

[1] One of the areas of dispute between Koenig and Respondent's leadership has to do with the legality of Respondent's action in increasing its union dues from $16 to $18 a month with the additional $2 to be used as a strike fund. Koenig has refused to pay that extra $2 each month. Counsel for the General Counsel argues in her brief that the $2 strike assessment does not constitute "periodic dues" as that term is used in Sec. 8(b)(2) of the Act. It is unnecessary to make a finding thereon as Respondent does not contend that it ever sought Koenig's discharge by reason of his failure to pay periodic dues in accordance with a valid union-security clause. Rather, Respondent's position simply is that it, at no time, ever sought to cause or caused Koenig's discharge.

[2] J-Sac has moved its employees, including carpenters referred by Respondent, from one jobsite to another without giving notice thereof to Respondent or to other buildings trades unions. There is no contention by Respondent before me that it sought to take any action against Koenig because J-Sac followed that practice.

until Cusumano telephoned him to apprise Cusumano of the purpose of his letter. In crediting Cusumano, I also note that he has no reason to antagonize Clark especially as Clark is the one who refers carpenters to J-Sac from Respondent's hiring hall.[3]

Respondent asserts that, as the letter does not contain a request for Koenig's discharge, and as there is no other independent evidence of such a request, I must dismiss the complaint allegation that Respondent sought Koenig's discharge on March 30. It is now well settled however, that an attempt by a union to cause the discharge of an employee can be inferred from the surrounding circumstances and need not be established only by an express demand therefor.[4] Respondent does not assert that the March 30 letter was sent pursuant to the union-security provisions of its contract with J-Sac. The reason it proffered for sending it was not credited, as discussed above. The credited evidence is that Cusumano understood the letter to be an attempt by Respondent to interfere with Koenig's employment as a carpenter by J-Sac. When he mentioned that matter to Clark, Clark did not offer any assurances or explantion but simply repeated that Koenig was no longer a member of Respondent. In that context and in view of the subsequent events of August 16, discussed below, the cryptic statement as set out in the March 30 letter had but one aim—bringing about Koenig's discharge from employment by J-Sac.

Turning now to the issue as to whether such a request was lawful, I note the well-settled law that the Board will infer or presume that the effect of a union's attempt to cause an employee's discharge unlawfully demonstrates its power to affect the livelihood of the employee and that that inference may be overcome, or that presumption rebutted, by showing either that the interference with employment was done pursuant to a valid union-security clause or by showing that the action was necessary to the union's effective performance of its function of representing its constituency.[5] Respondent does not seek to rebut that presumption by contending that its action was taken pursuant to a valid union-security clause and has offered no evidence to show that its sending the March 30 letter "was necessary to the effective performance of its function of representing its constituency."[6] In its brief however, Respondent asserted that there is evidence that Koenig "was an independent contractor relative to J-Sac" and that Koenig had entered into an essentially independent contract relationship with the purpose of "avoiding all union hiring hall procedures." There is virtually nothing in the record in this case which would support a finding that Koenig was an independent contractor or that he was involved in a conspiracy with J-Sac to avoid using Respondent's hiring hall procedures. There is even less evidence that Respondent, by any of its actions toward Koenig, including its March 30 letter, was seeking to protect its hiring hall procedures.[7]

It is readily apparent to me, and I so find, that Respondent, in sending the March 30 letter, was seeking to punish Koenig for his persistence in opposing the $2 strike assessment and for engaging in other protected activity. As Respondent has not rebutted General Counsel's prima facie showing and as the totality of the evidence discloses that Respondent's motives were as just stated, I must conclude that its March 30 letter was an attempt to cause J-Sac to discharge Koenig in contravention of the purposes of the Act.

C. *The Alleged Unlawful Acts of August 16*

Koenig learned that Clark had written Cusumano on March 30 as related above and he appealed his expulsion from membership in Respondent to the president of Respondent's International. As a consequence, the expulsion was stayed and Respondent was directed to treat Koenig as if he were still a member. Koenig continued in J-Sac's employ. On August 8, he was notified that the International had denied his appeal and that his expulsion from Respondent's membership was effective, retroactive to March 18.

Koenig testified respecting a discussion he had on August 16 with Cusumano. His account was offered for its truth and no objection thereto was interposed. Koenig related that Cusumano was obviously upset that day when he informed Koenig that Respondent business agent Clark had called him and had said that the International had ruled that Koenig was no longer a member of Respondent and that he, Cusumano, would therefore either have to lay Koenig off or else Respondent would pull its members off J-Sac jobs. Cusumano then laid Koenig off.

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[3] Cusumano also testified, in effect, that he would have had no recollection of his discussions with Clark but for the fact that he, Cusumano, had been in the hearing room when Koenig testified and had heard Koenig's related account. That testimony is not a basis to discount Cusumano's version of his conversation with Clark, as it is clear to me that Cusumano was not parroting earlier testimony by Koenig but was relating his own independent recollection of it, recently refreshed. Moreover, Cusumano's candor in conceding that his memory had to be refreshed, if anything, enhances his credibility.

[4] *Local 980, Teamsters (Auburn Constructors)*, 268 NLRB 894 (1984); *Bricklayers Local 6 (Key Waterproofing)*, 268 NLRB 879 (1984).

[5] *Operating Engineers Local 18 (Ohio Contractors Assn.)*, 204 NLRB 681 (1973), rev. on other grounds 496 F.2d 1308 (6th Cir. 1974). See also *Boilermakers Local 40 (Envirotech Corp.)*, 266 NLRB 432 (1983).

[6] In its brief Respondent argues that, as Koenig has failed to pay the $2 strike assessment, Respondent's actions are "excused under the (B) proviso of Section 8(a)(3)" of the Act. In substance, Respondent is contending that any unlawful act it committed must be excused because Koenig failed to pay what Respondent considers "periodic dues" owed by him. The law gives no such license to Respondent. If Respondent's contention is that its March 30 letter to Cusumano was in reality a request that J-Sac discharge Koenig pursuant to the union-security provisions of the contract J-Sac has with Respondent, I must reject that contention as there is no evidentiary support for it in the record and as it appears that Respondent business agent Clark has denied that that was ever his aim.

[7] It appears that Koenig, on his days off from his employment as a journeyman carpenter with J-Sac, occasionally did residential carpentry work, glazing work, and perhaps other work which is not related to the unit work performed by journeyman carpenters referred by Respondent to building construction sites. It further appears that J-Sac moved Koenig around to different jobsites and once let him take an extended leave of absence. However, the uncontroverted evidence is that established custom and practice has permitted J-Sac to transfer employees from one jobsite to another and that it can call back to its employ any carpenter laid off within a 6-month period of the date of recall. More significantly however, and as noted above, there is no evidence that Respondent's March 30 letter was aimed at redressing any of those alleged wrongs.

Cusumano's account of the discussion he had with Clark before he laid off Koenig corroborated Koenig's testimony that Clark had said that Koenig was no longer a member by reason of the International's ruling. Cusumano also related that Clark told him that he, Cusumano, could use Koenig "in the office" or "in the back woods" and that he, Clark, can always provide J-Sac with good journeymen. Cusumano testified further that, were it not for that discussion with Clark, he would not have laid Koenig off. Cusumano acknowledged that his memory was refreshed by his having heard Koenig's testimony, given earlier.

Clark testified that he had a conversation with Cusumano on August 17 about a nonunion contractor which had underbid J-Sac on a job. Clark related that, in the course of that August 17 discussion, Cusumano informed him that he was laying Koenig off because work was slow and that he would soon lay off the union steward. Clark further testified that, on August 18, Cusumano called him and asked if he could employ Koenig "on a bank job out in the woods" and that Clark informed him that he could employ him wherever he chose "and the only difference would be in arbitration on our contract, which would be up to the general office, because it was all being handled at that time in appeals at the general office, insofar as his expulsion." On cross-examination, Clark was asked about the testimony just quoted. In particular, he was asked what kind of a grievance could Respondent have filed which would give rise to arbitration under the contract. Clark replied that any such grievance would have related to J-Sac's "employment of someone who was not in the Union, who has been expelled from the Union [in that J-Sac] has a man working that's replacing someone who would be out there that's a Union member, making wages and feeding his family."

I credit the accounts of the General Counsel's witnesses over Clark's. The account given by Clark seems implausible. Clark's account also reveals that Respondent was very much opposed to J-Sac's having in its employ an expelled member, Koenig, particularly as one of its own members could be working in his stead.

The credited evidence discloses that, on August 16, Respondent, by its business agent Clark, informed J-Sac that Koenig was no longer one of its members, that it could employ him in the office or in the woods but that if it attempted to keep him as a carpenter it would be subjected to secondary pressures. In context and for the same reasons discussed above respecting the import of the March 30 letter, I find that Respondent by Clark thereby had attempted to cause J-Sac to lay off Koenig and that, as Koenig was immediately laid off, Respondent did in fact cause his layoff.

It is evident too from the totality of the evidence that Respondent's action towards Koenig in sending the letter on March 30 and also in having caused his layoff on August 16 was motivated by its hostility towards Koenig for having opposed the $2 monthly strike assessment and for having over the years vigorously opposed the leadership of Respondent. Such discriminatorily motivated actions directly interfere with employees' Section 7 rights and unlawfully induce employees to continue their support for Respondent.

D. *Alleged Refusal to Permit Koenig to Use Respondent's Referral Hall*

Koenig sought reconsideration of the International's denial of his appeal. In mid-September he was advised that he was successful as the International vacated its denial. On September 14, he attempted to attend a union meeting but was denied entry. That effort did not pertain to any related attempt by him then to use Respondent's referral hall. He was then still on layoff status from J-Sac.

On September 16, he visted Respondent's referral hall and left with Respondent's receptionist a copy of the International's letter which effectively had reinstated him as a member of Respondent.

On September 19, Koenig returned to the referral hall and asked Respondent's assistant business agent to telephone Cusumano and inform him that Respondent had no objection to Koenig's working for J-Sac. Koenig was informed that business agent Clark was away and that the matter would have to await his return. On September 21, Clark returned and told Cusumano, "I don't understand it. I don't know what those guys are doing in Washington, but Koenig is back in the union, so if you want him, you got him." The reference to the "guys in Washington" obviously is to the officials of Respondent's International who reinstated Koenig to membership. Koenig was then put back to work by J-Sac.

The complaint alleges that, from about August 16 to September 21, Respondent unlawfully prevented Koenig from signing its out-of-work book at its hiring hall and unlawfully refused to refer him to work from its hiring hall during that interval. There is no evidence that Koenig sought to sign the out-of-work book. There is no evidence that he was seeking referrals during that interval. The evidence rather is that he was attempting to get his job back with J-Sac. He was shortly thereafter reinstated as a J-Sac employee, as related earlier. The monetary losses he suffered as a result of his unlawful layoff are to be remedied as provided for below.

The General Counsel's basic contention respecting the third alleged unlawful act set out in the complaint is that Respondent's overall conduct made it clear to Koenig that it would have been futile for him to sign the out-of-work book. In effect I view this observation as an implied request for a broad remedial order against Respondent. In that regard, I note that the Board recently had occasion, inter alia, to modify a notice to members after it had determined that a union had unlawfully caused an employer to discharge an employee. But, in that case, the Board did not modify the recommended order and the Board did not provide for a broad order.[8] I shall follow that precedent.

CONCLUSIONS OF LAW

1. Respondent is a labor organization within the meaning of Section 2(5) of the Act.

2. J-Sac Construction Co., Inc. and the Building Contractors Association of New Jersey are employers en-

[8] *Bricklayers Local 6*, supra at fn. 5.

gaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. By attempting on March 30, 1983, to cause J-Sac to discharge its employee, William J. Koenig, Respondent has violated Section 8(b)(1)(A) and (2) of the Act.

4. By attempting to cause and by having caused J-Sac to lay Koenig off from August 16 to September 21, 1983, Respondent has violated Section 8(b)(1)(A) and (2) of the Act.

5. Respondent did not prevent Koenig from signing the out-of-work book at its hiring hall and did not refuse to refer him to employment from its exclusive hiring hall; the complaint allegations that it had unlawfully done so shall be dismissed for insufficient evidence.

6. The unfair labor practices found above in Conclusions of Law 3 and 4 are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(b)(1)(A) and (2) of the Act, I shall recommend that Respondent be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Since I have found that Respondent unlawfully caused J-Sac to lay off Koenig, I shall recommend that Respondent make Koenig whole for any loss of earnings suffered by him as a result of the discrimination against him. Loss of earnings shall be computed in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and *Florida Steel Corp.*, 231 NLRB 651 (1977). See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

I shall also recommend that Respondent be ordered to expunge from its files any reference to Koenig's unlawful layoff, and to notify him, in writing, of its actions as well as to inform him that his unlawful layoff shall not be used as a basis for future action against him. Furthermore, I shall recommend that Respondent be required to ask J-Sac to remove from its files any reference to Koenig's unlawful layoff and notify him that it has asked J-Sac to do so. See *R. H. Macy & Co.*, 266 NLRB 858 (1983).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[9]

ORDER

The Respondent, Local 455, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Causing or attempting to cause J-Sac Construction Co., Inc. to lay off or otherwise discriminate against William J. Koenig for arbitrary, invidious, or discriminatory reasons, including the fact that he has engaged in activities protected by the Act.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act.

(a) Make William J. Koenig whole for any loss of pay he may have suffered as a result of the discrimination against him in the manner set forth in the section entitled "The Remedy."

(b) Post at its business office copies of the attached notice marked "Appendix."[10] Copies of the notice on forms provided by the Regional Director for Region 22, after being signed by Respondent's authorized representative, shall be posted and maintained by it for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Forward a sufficient number of signed copies of the notice to the Regional Director for Region 22 for posting by J-Sac at its place of business, in places where notices to employees are customarily posted, if J-Sac is willing to do so, and ask J-Sac to remove any reference to Koenig's unlawful layoff from J-Sac's files and notify him that it has asked J-Sac to do this.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

[9] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[10] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that was violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT cause or attempt to cause J-Sac Construction Co., Inc. to lay off or otherwise discriminate against William J. Koenig based on arbitrary, invidious, or discriminatory reasons including the fact that he has engaged in activities protected by Section 7 of the Act.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make William J. Koenig whole for any loss of pay he may have suffered as a result of our discrimination against him, with interest.

WE WILL notify J-Sac Construction Co., Inc., in writing, and furnish a copy of such notification to William J.

Koenig, that we have no objection to his employment by said Employer.

WE WILL notify William J. Koenig that we have removed from our files, and have asked J-Sac to remove from its files, any reference to his layoff and that we will not use the layoff against him in any way.

LOCAL 455, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO